IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT.

Vallabh Darshan Hotel Private Limited & anr. **vs.** The State of Rajasthan & ors.

S.B. Civil Misc. Appeal No.483/2006 against the Order dated 10.3.2006 passed by the learned Addl. District Judge, Nathdwara in Civil Misc. Case No. 39/2004.

Date of Judgment: May 29th,2007.

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr. M.R. Singhvi for the appellants.
Mr. H.R. Soni for the respondents.

BY THE COURT:

REPORTABLE

This Misc. appeal has been preferred by the defendants to challenge the order of the trial court dated 10.3.2006 by which the learned Addl. District Judge, Nathdwara allowed the respondent's injunction application filed under Order 39 Rules 1 and 2, C.P.C. and directed both the parties to maintain status quo with respect to the property in dispute and permitted defendants no.3 and 4 to close the door if they are opened, so that unwanted persons may not entered into the property and the property may be protected properly. It is also ordered that if any preventive measures are

taken by the administrative authorities by preventing of entry of unwanted persons in the disputed property then the particulars of those measures be furnished to the trial court.

Brief facts which have emerged from the pleadings of the parties and the documents placed on record are required to be mentioned for the purpose of deciding this appeal. It is said that a *Patta* was issued for the property in dispute in the name of Shri Gopal Lal grand-father of defendantno.2 Shri Krishna Kumar in the Samvat year 1945. Copy of the said *Patta* has been placed on record. Said Gopal Lal died and his son Shri G.S. Vitthalnathji Gopalji Maharaj, put his ancestral as well as his self-acquired properties including the property in dispute in common hotchpotch of joint Hindu family and thereafter all the properties were partitioned in the year 1962. A memorandum of partition was reduced in writing on 16.12.67, copy of which has been placed on record by the defendants. By this, the partition of the year 1962, the memorandum which was written on 16.12.1967, the property in dispute involved in the suit came in the share of defendant no.2 Krishna Kumar. Said Krishna Kumar sold the property to Chandra Kant and his family members by registered sale-deed dated 2.7.1977. In the year 1982, said Krishna Kumar who started living

at Baroda, decided to create a public trust and gave his personal property to Shri Mathuru Nathji temple to create trust and for that purpose, prepared the scheme of trust which was reduced in writing by deed dated 2.6.1982. It is a case of the defendants-appellants as well as his predecessor in title Krishna Kumar defendant no.2 that on 2.6.1982 defendant no.2 was not owner of the property in dispute and, therefore, the the property in dispute was not included in the said scheme of the trust. The copy of the sale deed dated 2.7.1977 as well as the scheme of trust dated 2.6.1982 are also placed on record. To get the trust registered as public trust, an application was submitted before the Assistant Commissioner, Devasthan Department, Udaipur on 8.6.1982 by said Krishna Kumar through his Advocate. The copy of the scheme of the trust along with Form No.6 as is required under the Rajasthan Public Trust Act, 1959(for short 'the Act of 1959'), were also submitted to said authority by the said Krishna Kumar. The Assistant Commissioner, Devasthan Department registered the case and issued public notice on 10.11.1982 and thereafter also got the notice published in the news papers also. Said Krishna Kumar appointed his power of attorney to get all work of registration of trust. This power of attorney is dated 28.6.1983. It is said by the

defendants that this power of attorney was for only one temple, that is Shri Mathura Nathuji temple and was not for the property in dispute. On 21.11.1983, certain documents were submitted by said Krishna Kumar's power of attorney, along with other documents, also submitted the registered sale deed dated 2.7.1977 by which Krishna Kumar himself sold the suit property to Chandra Kant and his family members. Krishna Kant did not gave his statement in the proceedings for registration of the trust but his power of attorney Chunni Lal gave his statement before the Assistant Commissioner, Devasthan Department on 2.3.1984. It is alleged that in fact, the suit property was not included in the scheme of the trust nor it was mentioned in the list of properties of the trust but the power of attorney who was given limited power that too with respect to the particular property, i.e. Shri Mathura Nathji Temple without any instruction of the said Shri Krishna Kumar, included the property in dispute in the list of the properties of the trust. The Assistant Commissioner, Devasthan Department registered the public trust by order dated 21.1.1985. The name of the trust is *thakur Mathuranathji-ka-temple, Chhota Bhandar Trust, Kankroli.* In the list of the properties of the said trust (for short Mathuranathji Trust), the suit property was also included by the order of Assistant

Commissioner, Devasthan Department, Udaipur.

It will be worthwhile to mention here that no notice was given by the Assistant Commissioner, Devasthan Department to the purchasers Chandra Kant and or any of purchasers who purchased the suit property by sale deed dated 2.7.1977, before declaring the property sold by Krishna Kant by sale-deed dated 2.7.77 to be trust property despite the fact that it was brought to notice of the Assistant Commissioner, Devasthan Department, that the property in dispute was sold by the settler of trust about more than seven years ago and seller is in possession of the property in dispute. In the order dated 21.1.1985, the Assistant Commissioner, Devasthan Department, Udaipur observed that the suit property was sold to Chandra Kant s/o Ganga Das and others and that sale was conditional. The Assistant Commissioner, Devasthan Department, Udaipur also recorded the stand taken taken by the power of attorney(of Krishna Kant) that the property has not been got released from Chandra Kant. The Assistant Commissioner, Devasthan Department, Udaipur also observed that it was contended that settler Krishna Kumar is prepared to get the property released (from Chandra Kant and others) but Chandra Kant etc. are not ready to give the possession of the property to

the said settler or to the temple. The Assistant Commissioner, Devasthan Department, Udaipur in para 5 of the order, after observing that since the sale-deed which the Assistant Commissioner, Devasthan Department, Udaipur treated as conditional agreement and also declared sale-deed as void and declared that the property is the property of Mathuranathji trust temple.

After 14 years from sale and about 6 years from registration of the Trust, the property which was sold to Chandra Kant by registered sale-deed dated 2.7.1977 was re-purchased by same Krishna Kumar by registered sale-deed dated 10.7.1991. Till this time, neither there was any dispute nor any body claimed the property in dispute from Chandra Kant and his family members and no body challenged the sale deeds dated 2.7.1977 or 10.7.1991. The dispute arose only when said Krishna Kumar again sold this property to present appellant-defendants by registered sale-deed dated 10.7.2000 for a consideration of Rs.35,00,000/-and handed over possession of the property to the purchasers appellants-defendants.

According to the defendants-appellants, the purchaser from Krishna Kumar, they obtained the permission to raise construction

of hotel over the property in dispute from the Municipal Board, Nathdawara which was granted to them by the Municipal Board, Nathdawara on 28.11.2000. The defendants-appellants demolished the property and started new construction over the land in dispute. Then one Navneet Soni filed Civil Original Suit for injunction being Suit No.9/2001 in the court of Civil Judge (Sr.Div.), Nathdawara against the appellants and the seller Krishna Kumar on 28.2.2001. Subsequently, the Assistant Commissioner, Devasthan Department, Udaipur was also impleaded as party in the said suit no.9/01 by the plaintiff Navneet Soni. It appears that during pendency of the suit of Navneet Soni no.9/01, Krishna Kumar preferred appeal on 15.7.2000,under the provisions of the Rajasthan Public Trust Act, 1959 to challenge the order of the Assistant Commissioner, Devasthan Department, Udaipur dated 21.1.1985 which was after 15 years from the date of order dated 21.1.1985. Krishna Kumar's said appeal was dismissed by the Commissioner, Devasthan Department by order dated 22.10.2002 holding the appeal to be barred by time. Section 22 of the Act of 1959 provides filing of the suit for cancellation of entry made in the register of public trust after the decision of the appellate authority. Then said Krishna Kumar approached civil court by filing civil original suit no.14/2003

on 13.1.2003 in the court of District Judge, Udaipur. Apparently, Krishna Kumar, who was defendant in the suit of Navneet Soni, no.9/01, preferred appeal to challenge the order of the Assistant Commissioner, Devasthan Department, Udaipur dated 21.1.1985 and after dismissal of said appeal, filed suit for cancellation of entry made in the register of trust properties by order of the Assistant Commissioner, Devasthan Department dated 21.1.1985 in the court of District Judge, Udaipur on 13.1.2003 when the earlier filed suit of Navneet Soni, No.9/01 was pending . Navneet Soni's suit no.9/01 was contested by the present appellants-defendants, Krishna Kumar and the Assistant Commissioner, Devasthan Department, Udaipur. Navneet Soni's case no.9/01 was dismissed by the trial court on 21.5.2005.

In Navneet Soni's suit no.9/01, the trial court framed specific issues in relation to the nature of the property as well as in relation to the title to property and further about the validity and legality of the order dated 21.1.1985. In said Civil Original Suit No.9/01, the trial court in judgment dated 21.5.2005 held that the property in dispute was the personal property of Krishna Kumar and the property was never the property of the temple and specifically held that the property was not of the temple on

10.7.2000 when the property was sold to the present appellants-defendants by Krishna Kumar. The trial court specifically recorded finding that the order of Assistant Commissioner, Devasthan Department, Udaipur dated 21.1.1985 was wholly without jurisdiction so far as it relates to the property purchased by the appellants-defendants. In addition to above finding, the trial court also held that the present appellants who were defendants in the suit no.9/01, are the bona fide purchasers of the property by sale-deed dated 10.7.2000. It will be relevant to mention here that Krishna Kumar supported the case of his purchaser the present appellants in Navneet Soni's case.It is admitted fact that Regular First Appeal has been preferred by Navneet Soni against the judgment passed against the judgment and decree dated 21.1.1985 whereby the trial court dismissed Navneet Soni's suit after recording above finding on 21.1.1985. The said first appeal is pending before this Court but, admittedly, none of the parties obtained any interim order in the said first appeal.

It is the case of defendant Krishna Kumar that when the issue has been decided by the civil court with respect to the nature of the property, the title of the property as well as legality and validity of the order dated 21.1.1985, in Navneet Soni's case

No.9/2001 then Krishna Kumar withdrew his suit No.14/2003 which was filed in the court of District Judge, Udaipur under Section 22 of the Act of 1959 for cancellation of entries made in the register showing the suit property as thrust property.

Despite the fact that in the earlier filed suit wherein the issues were framed in relation to the nature of the property, title to the property and legality of the order dated 21.1.1985, the State Government and the Commissioner, Devasthan Department and the Assistant Commissioner, Devasthan Department, Udaipur, have filed the present suit for cancellation of the sale-deed dated 10.7.2000 in the year 2004. It appears that the plaintiffs-respondents- the State of Rajasthan and the Devasthan Department of the Government of Rajasthan might have been advised to challenge the sale deed dated 10.7.2000 because of the fact that the appellants-defendants are claiming them to be owners of the property in dispute on the strength of sale-deed dated 10.7.2000.

The contention of the plaintiffs in the present suit is that the property in question, has been declared to be public trust vide order dated 21.1.1985 and it has been included in the list of the properties of the trust in accordance with the law by order dated 21.1.1985, therefore, said Krishna Kumar had no right to alienate

the property as he was not the owner of the property in dispute and the property in dispute was the property of the trust on 10.7.2000. It is also submitted that none of the properties of public trust can be sold without the permission of the competent authorities under the provisions of the Act of 1959. It is also contended that the property is of deity and deity is perpetual minor, therefore, since the sale was effected without obtaining permission of the district court, under the provisions of the Rajasthan Minority and Guardianship Act, therefore, also the sale-deed dated 10.7.2000 is void.

In the suit, injunction application was filed by the plaintiffs and it is prayed that the defendant-purchasers be restrained from raising any construction over the property in dispute and further the defendants no.3 and 4-appellants be restrained from alienating the property in dispute. Mandatory injunction was sought against defendants no.3 and 4 that they may be directed to put property in the position back if they are able to raise construction during pendency of the suit.

The injunction application was seriously contested by the appellants-defendants no.3 and 4 by filing reply to the injunction application and contention of defendants no.3 and 4 was that the

property in question was the personal property of the family of Krishna Kumar and it fell in share of the Krishna Kumar by virtue of partition of the year 1962 and which is evidenced by the memorandum of partition dated 6.12.1967. The property was dealt with by said Krishna Kumar as his personal property and he sold the property to Chandra Kant and others as back as in the year 1977 by registered sale-deed. After 1977, Krishna Kumar was not the owner of the property in dispute nor he intended to create the trust by including the property in dispute which is evident from the memorandum of trust, copy of which has been placed on record. Before the Assistant Commissioner, Devasthan Department, Udaipur, the power of attorney of Krishna Kumar submitted documents relating to the suit property and wrongly included the suit property in the list of trust properties despite the fact that the said proper of attorney was given authority to do the work only for Shri Mathura Nathji Temple which is clearly mentioned in the power of attorney dated 28.6.1983 which is a registered power of attorney. The act of power of attorney Chunni Lal was therefore, without any authority of Krishna Kumar apart from the fact that said Krishna Kumar himself had no right, title or interest in the property in dispute. It is also submitted that the order of the

Assistant Commissioner, Devasthan Department, Udaipur dated 21.1.1985 is void ab initio so far as it relates the rights of Chandra Kant and others as no opportunity of hearing was given to said Chandra Kant and others, the purchasers by virtue of sale-deed dated 2.7.1977, by the Assistant Commissioner, Devasthan Department before including the property in question in the list of the properties of the trust. It is also contended that the Assistant Commissioner, Devasthan Department, Udaipur neither had jurisdiction to decide the title of the property nor could have declared validly declared sale deed as null and void. The Assistant Commissioner, Devasthan Department, Udaipur was well aware that the property was not in possession of Krishna Kumar or the Trust even on the date when the statement of Krishna Kumar's power of attorney Chunni Lal was recorded by the Assistant Commissioner, Devasthan Department as well as on the date when the matter was heard by the Assistant Commissioner, Devasthan Department, Udaipur, as in the order itself the Assistant Commissioner, Devasthan Department, Udaipur recorded the contention of the applicant's power of attorney that the settler is trying to take possession of the property in dispute from the purchaser Chandra Kant and others but Chandra Kant and others

are not agreeable to hand over possession of the property in dispute to the settler then in that situation, even the possession of the property was not with Krishna Kumar or the temple or the trust, is admitted fact, then the property could not have been declared to be trust property even on the basis of its use.

During pendency of the suit and the injunction application, said Krishna Kumar died and his legal representatives were taken on record. Both the parties submitted several documents in the trial court, reference of which has been given above.

The trial court after hearing the application for grant of injunction,as stated above, allowed the injunction application filed by the respondents-plaintiffs by order dated 10.3.2006. Hence this Misc. Appeal has been filed by the defendants-purchasers of the property.

The trial court after narrating the facts as well as the judgments cited by both the parties, took note of the reasons given by the Assistant Commissioner, Devasthan Department, Udaipur in order dated 21.1.1985 and held that at this stage prima facie it cannot be said that the inclusion of the property in dispute in the register of trust property was without jurisdiction. The trial court observed that the questions; whether the property in dispute

could have been put in the list of trust property by the settler , whether the applicant in fact included property in dispute in the memorandum of trust, whether the power of attorney of settler was authorised to include the property in dispute in the list of properties of trust, whether the order passed by the Assistant Commissioner, Devasthan Department are illegal and whether the order dated 21.1.1985 or the appellate court passed by the Commissioner, Devasthan Department, affected the rights of Chandra Kant or the defendants purchasers, are the questions involved in the suit and without evidence, the court cannot make any comments on these issues while deciding the application for grant of injunction. The trial court also observed that the decision given in Navneet Soni's suit, cannot debar the court from hearing suit on ground of principle of resjudicata as the decision of the trial court in Navneet Soni's case has not attained the finality as is sub-judiced as appeal has been preferred by Navneet Soni and which is pending before the High Court . In substance, the trial court was of the view that since serious questions are involved in the suit and it requires consideration, there is prima facie case in favour of the plaintiffs. The trial court also observed that in case during pendency of the suit, new construction is raised, then that

will be against the plaintiffs' interest and it will cause comparative greater hardship to the plaintiffs. With these reasons in brief, the trial court allowed the injunction application of the plaintiffs and directed the defendants to maintain the status quo with respect to the property in dispute and permitted defendants no.3 and 4 to put gates for protecting the property in dispute.

The learned counsel for the appellants submitted that the trial court miserably failed to appreciate what is the prima facie case and without finding out the prima facie case of the plaintiff, observed that since, in the opinion of the trial court, there may be disputed questions of facts, therefore, there is prima facie case in favour of the plaintiffs. According to the learned counsel for the appellants, the approach of the court below was absolutely perverse and arbitrary and the court below ignored the material facts which are not in dispute. Perversity in the order is that the facts which are not in dispute are held to be facts in dispute. The court below even did not record any finding about the right of the plaintiffs in seeking cancellation of sale-deed as well as plaintiff's right for claiming possession of the suit property from the defendants-appellants. The trial court even did not properly appreciate the fact that the sale-deed in favour of the plaintiffs

was executed on 10.7.2000 and the plaintiffs had full knowledge of the said sale-deed since beginning. The above sale-deed dated 10.7.2000 was also subject matter in the earlier filed suit of Navneet Kumar wherein the Assistant Commissioner, Devasthan was party. Despite having knowledge of the sale-deed dated 10.7.2000, the suit has been filed after the period of three years which on the face of it is barred by time. It is also submitted that the trial court did not look into the undisputed facts that property in dispute was received by the original title holder as back as in the year 1945 through Patta. The owner of the property since then enjoyed property as their own personal property and thereafter affected the partition in the year 1962 and gave it to defendant no.2. Memorandum of partition executed in the year 1967. Thereafter, Krishna Kumar by exercising his property right, sold the property to Chandra Kant and others as as back as in the year 1977 and said Chandra Kant and others, the purchasers remained in possession of the property in dispute in the knowledge of all since year 1977 up to the year 1991 for continuous 14 years. The Assistant Commissioner, Devasthan was made aware of this fact that Krishna Kumar vendor sold the property to Chandra Kant and others by registered sale-deed of July, 1977 and even it was made

clear by the power of attorney holder of Krishna Kumar that despite Krishna Kumar's demanding the possession of the property back, Chandra Kant and others did not give the possession of the property to Krishna Kumar till the order dated 21.1.1985 was passed by the Assistant Commissioner, Devasthan Department by which it is claimed that property in dispute became trust property. Chandra Kant and others re-sold the property to Krishna Kumar by another sale-deed dated 10.7.1991. The property was purchased by Krishna Kant on 10.7.1991 from his own money. The plaintiffs neither challenged the Patta of the year 1945 nor challenged the memorandum of partition deed of the year 1967 nor challenged the sale-deed dated 2.7.1977, nor challenged the sale-deed dated 10.7.1991 and straight way challenged the sale-deed dated 10.7.2000. The peculiar fact is that even the trust itself never challenged any of the above dealings nor are challenging today.

It is also submitted that, for the sake of argument, that if the sale-deed dated 10.7.2000 is set aside then the property can go to Krishna Kumar and he can be owner of the property by virtue of sale-deed dated 10.7.1991. In that situation, the plaintiffs cannot get possession of the property. It is also submitted that in entire plaint, there is no case of the plaintiffs that the suit

property though was the private property of erstwhile owner but was dedicated for the purpose of any public trust otherwise than by the alleged memorandum of trust deed dated 2.6.1982(In addition to above, the appellants' contention is that in the scheme of trust deed dated 2.6.1982, the property in dispute has not been made property of trust). It is also submitted that without admitting any of the case of the plaintiffs-respondents, even if this property is property of defendant no.1-trust then also the plaintiffs cannot get the decree for possession in any case under any provisions of law. In view of above, the entire suit of the plaintiffs was totally misconceived and has been filed without any legal right.

The learned counsel for the appellants further vehemently submitted that the sale-deed dated 10.7.2000 was already subject matter in the suit filed by one Navneet Kumar before present suit was filed and in that suit, the civil court has recorded specific findings that the suit property is not trust property. The suit property was private property of family of defendant Krishna Kumar. The suit property was sold by Krishna Kumar to Chandra Kant and others in the year 1977 and Chandra Kant and others came in possession of the suit property by virtue of sale-deed of the year 1977. Krishna Kumar repurchased the property from

Chandra Kant and others and the civil court in Navneet Kumar's case held that the appellants, the purchasers of the property are the bona fide purchasers for valuable consideration. All those findings of facts have been ignored by the trial court by saying that all these issues are disputed questions of facts. It is submitted that the finding in decree of civil court cannot be ignored in this way while considering the grant of injunction though in another suit but where contracting parties were the party in that earlier suit. It is submitted that even if the judgment and decree of the trial court in Navneet Kumar's case is under challenge in appeal before the High Court then in that appeal, no injunction order has been granted by the High Court against the appellants who are parties in the appeal pending before the High Court. In Navneet Kumar's case, the Assistant Commissioner, Devasthan was party and, therefore, all the issues were decided by the civil court after giving full opportunity to the plaintiffs. It is also submitted that if the finding In Navneet Kumar's case may not be binding then also it has it's persuasive value. It is submitted that the finding on issues after trial, may not have attend finality yet these findings are based on evidence in the suit then there is no reason to not accept these findings while deciding injunction application which is

decided only on the basis of affidavits and without actual proof of facts.

The learned counsel for the appellants on merits also submitted that the plaintiffs are still not in position to disclose their any right by which plaintiffs can claim possession of the suit property in this suit or otherwise under any provisions of law. It is submitted that the State is stranger in the matter of title to the property in dispute even if best of case of plaintiffs alone is looked into and cannot be owner of the even property of any public trust created under the provisions of the Indian Trust Act and even when it is got registered under the provisions of the Rajasthan Public Trust Act, 1959. No power has been given to the State of the Devasthan Department of the State to take possession of the property from any person on the ground that in the opinion of the State or in the opinion of Devasthan Department of the State, the property of a public trust is not being managed by the trust property. In that situation also the appropriate action can be taken under Section 38 of the Act of 1959. This opportunity is available to any person who has interest in the public trust and in that situation the Assistant Commissioner, Devasthan Department could have granted permission to any person interested in the public

trust to apply for the direction of the court with respect to the proper management of the trust property. From the plaint it is clear that it is not the case of the plaintiffs that since 1945 when Patta was issued to the owner of the property in dispute,any body has raised any objection that the property is property of deity or of any public trust and the position continued for more than half century and during this period, the property was dealt with by the owner of the property as their personal property by registered documents. It is submitted that when there is no objection of any of the persons interested in trust then how the plaintiffs could have filed the suit in violation to the provisions of the Act of 1959, has not been examined by the trial court. It is also submitted that if the property remained in possession of Chandra Kant and family since 1977 to 1991 and thereafter, it remained in possession of defendant no.2 Krishna Kumar from 1991 to 2000 then under which provision of law, said property can be a public trust property. The dispute has been raised only when the appellants paid huge amount of Rs.35,00,000/- for purchase of the property in the year 2000. It is submitted that if property would have remained with Chandra Kant and his family or with Krishna Kumar, no body including the plaintiffs would have any objection.

According to the learned counsel for the appellants, the order of the trial court is absolutely perverse because of the reason that the trial court by ignoring relevant material facts felt influenced because of the scene projected by the plaintiffs-respondents creating an impression that it is matter relating to some religious sentiments and in relation to disposing of the property of public trust or temple. It is submitted that in view of the undisputed documents as well as the facts pleaded in the plaint itself, the court below should have come out of the said impression and should have decided the application of grant of injunction on the basis of undisputed facts and on the basis of the legal provisions but the court failed to do so.

The learned counsel for the appellants also submitted that the appellant has already suffered a lot of loss because of grant of injunction. The appellants being owners of the property have right to raise construction and they will raise construction as per the approved plan. The appellants will suffer greater hardship in case order of injunction is continued and that will result into irreparable loss to the appellants because of the reason that if the appellants will not be permitted to raise construction of the building then the loss which can be caused to the appellants,

cannot be ascertained, whereas in case the respondents-plaintiffs will succeed, they can get their property in the position as it was. The loss due to escalation in price of construction will be difficult to calculate and, therefore, the damages may not be adequate relief to the defendants-appellants. The learned counsel for the appellants submitted that though all those requirements are the requirements for obtaining injunction which are required to be proved by the plaintiffs for obtaining injunction but the plaintiffs have not proved any case of prima facie, balance of convenience or the irreparable injury, whereas the appellants-defendants fully proved their very strong case of title, possession and balance of convenience in their favour as well as in case of grant of injunction, irreparable injury to the appellant-defendants.

In support of his contentions, the learned counsel for the appellants relied upon the following judgments: Babu Bhagwan Din & ors. vs. Gir Har Saroop and others (AIR 1940 PC 7), Gheesu Das v. Narsingh Kansara & ors. (1999(3) WLC (Raj.) 586), Abdul Karim Khan and ors vs. Municipal Committees, Raipur (AIR 1965 SC 1744), Radhakishan and another vs. State of Raj. And others (AIR 1967 Raj. 1), K.P. Jamadar v. K.M. Irany & ors (AIR 1973 Bom. 130), Marathwada Walf Board vs. Rajaram Ramjivan Manthri (AIR

2002 Bom 144), B.Gowra Reddy (deceased by L.Rs. and ors. vs. Government of Andhra Pradesh and ors (AIR 2002 A.P. 313), Punjab Walf Board v. Gram Panchayat alias Gram Sabha (AIR 2000 SC 3488), R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P.Temple and another (AIR 20032 SC 4548), The State of Raj. & ors. vs. The Rajasthan Board of Muslim Walf, Jaipur & ors. (2002(3) DNJ (Raj.) 995), M/s Prabha Construction(P) Ltd. And others v. Smt. Shan Trilochan Singh and another (AIR 1995 Delhi 79), Lalubhai Hirabhai Pateland another vs. Indo-Japan Industries and ors (2002(1) Civil LJ 36), Gomti Devi and anr. vs. Ashok Bhandari & anr. (2006(2) DNJ(Raj.) 1078), Shri Jagadguru Gurushiddaswami Guru Gangadharswami Murusavirmath v. The Dakshina Maharashtra Digambar Jain Sabha (Air 1953 SC 514), YeshwantraoLaxmanrao Ghatge and another v. Baburao Bala Yadav (AIR 1978 SC 941), Joseph Carlos Zavfer Louis Anothony Benedict Aldo Costa v. Stanislaus Costa and others (AIR 1968 Mad. 161), V. Rajaram v. Ramanujam Iyengar and others (AIR 1963 Mad. 213), Panchayat Deh, through Sarpanch and Gram Sabha, Garhi Brahman v. Punjab Walf Board, Ambala and another (AIR 1969 P & H 344), Atmaram vs. Gulamhusein Gulam Mohiyaddin and another (Air 1973 Guj. 113), Nagar Wachan Mandir v. M/s Akabaralli Abdulhussain

(1994(3) Civil LJ 35), Mushir Mohammed Khan (dead) by L.Rs. v. Smt.Sajeda Bano and others (AIR 2000 SC 1085), K. Simrathmull v. Nanjalingiah Cowder (AIR 1963 SC 1182) and Bahadur v. Motiram and anr. (AIR 1972 Raj. 250).

The learned counsel for the appellants also relied upon recent Division Bench judgment of this Court delivered in the case of Laxmi Chand Nath &ors. v. The Commissioner of Rajasthan (2006 (3) CDR (Raj.) (DB) 2103). With the help of this judgment, the learned counsel for the appellant submitted that the Division Bench of this Court held that Section 73 of the Rajasthan Trust Act, 1959 does not create an absolute bar to civil court's jurisdiction and held that the jurisdiction of civil court is barred only with respect to question which is by or under Act of 1959 to be decided or dealt with by the officer of the authority under the Act or in respect of which the decision or order of such officer or authority has been made final and conclusive. The Division Bench held that the question which cannot be decided or dealt with by any officer or authority under the Act of 1959, would fall outside mischief of Section 73 and suit in respect of such question or dispute would be maintainable. The Division Bench further held that where temple/trust itself is claimed to be private trust, the bar created

under Section 73 of the Act could not be attracted. In view of the above reasons, it is clear from the facts of the case that the defendants-appellants as well as his predecessor in title as well as the trust itself clearly stated that the property is not a public trust property nor it could have been made a trust property by a person, not owner of the property at relevant time, then the civil court had jurisdiction to declare that the entry made in the Register of the Department about the trust property itself cannot divest the owner of the property from its title. Under the entire Act of 1959, none of the authority has been given any power to adjudicate upon the title of the property. With the help of this very judgment, learned counsel for the respondents-plaintiffs tried to submit that this very judgment says that the entry in the Register of the trust can be corrected only by filing suit under Section 22 of the Act of 1959 and not otherwise and in this case, the said entry was not challenged in time and when the vendor Krishna Kumar filed the suit under Section 22 of the Act of 1959, then he withdrew that suit and, therefore, the entries are final.

The learned counsel for the respondents-plaintiffs made all efforts to support the order of the trial court dated 10.3.2006. The learned counsel for the respondents submitted that the trust can

be created expressly or by implication. The property in question by its name , that is Gopallalji ka temple, clearly shows that the property is of deity and of public trust and, therefore, any deed executed against the interest of public trust or the deity, are absolutely void because the deity is minor and this plea has been taken by the plaintiffs in the plaint itself by submitting that since deity is minor, therefore, the property of minor could not have been sold without obtaining permission of the District court of the area under the provisions of the Hindu Minority and Guardianship Act. Any alienation of the property of the trust is also void, if has been affected without the permission of the competent authority in view of Section 31 of the Rajasthan Trust Act, 1959. It is also submitted that defendant no. 2 Krishna Kumar is the managing working trustee of defendant no.1-Trust and he had no authority to sell the property of the trust on behalf of defendant no.1-Trust nor he could have sold the property showing it as his own. It is also submitted that the sale-deed dated 10.7.2000 is null and void and, therefore, the period of limitation for cancellation of sale-deed cannot be applied to present suit. It is submitted that all the properties of the public trust are required to be registered under the Act of 1959 and the authorities under the Act of 1959 has

ample jurisdiction and power to see that the trust as well as the trust properties are managed and maintained properly and the trust property may not be alienated illegally even by the trust itself. Therefore, it was the duty of the plaintiffs-respondents to take appropriate action to protect the property of the public trust. It is also submitted that the trial court gave detail reason for holding issue of prima facie case in favour of the plaintiffs then the appellate court should not interfere in such finding of fact. It is also submitted that in case injunction is vacated then the property in dispute will be dealt with by the defendants-appellants in a manner which is absolutely disadvantageous to the interest of the public at large, apart from the interest of the trust which is registered public trust under the provisions of the Act of 1959.

The learned counsel for respondent no.1 vehemently submitted that the findings of the civil court in Navneet Kumar's case, are absolutely irrelevant because of the reasons that those findings are not final and are yet sub-judice before this Court. In that situation the appellants-defendants cannot take help of the finding recorded in Navneet Kumar's case. It is also submitted that as per Section 21 of the Act of 1959, any entry made in the Register by the Assistant Commissioner, Devasthan Department, in

pursuance of the final decision on enquiry under Section 18, the entries are made conclusive by virtue of sub-section (2) of Section 21 of the Act of 1959. The entry of the property made in the Register maintained by the authority under the provisions of the Act of 1959, can be corrected only by way of any decree passed by the civil court on institution of suit under Section 22 of the Act of 1959. Defendant Krishna Kumar himself challenged the entry by which the property in dispute has been shown as trust property in the Register by filing suit in the District Court, Rajsamand and he withdrew that suit, then defendant Krishna Kumar or the person claiming through him, the appellants purchasers cannot challenge the entries made in the Register by the Assistant Commissioner, Devasthan Department under the provisions of the Act of 1959. It is submitted that the Assistant Commissioner, Devasthan Department is empowered to enquire into the properties of the trust under sub-clause (ii) of Section 18 of the Act of 1959. Therefore, the trial court rightly relied upon the entries made in the Register of the trust in accordance with law and rightly held that the property in dispute is public trust property. Apart from above, the learned counsel for the respondents-plaintiffs tried to submit that in fact the sale-deed executed by Krishna Kumar in favour of Chandra

Kant and others dated 2.7.1977 was in fact not the sale-deed but was a conditional sale or was a mortgage. The learned counsel also submitted that the property in dispute, by its nature, is trust property and, therefore, even if some deeds were executed, like memorandum of partition deed of 1967, sale-deed of 2.7.1977, sale-deed of 10.7.1971 and lastly, sale-deed of 10.7.2000, then also the nature of the property remained as of public trust as well as the property remained the property of the temple. In view of above, the plaintiffs can prove by evidence that though it may be private property originally but has been dedicated for public purposes and to the trust and to the deity or temple and, therefore, no one had right to deal with the property as of his own property and all the deeds are absolutely void.

The learned counsel for the respondents-plaintiffs relied upon the D.B. Judgment of this Court delivered in the case of Bajrandas & ors. vs. Vishva Karma Jangid Panchayat through its President Shri Ramchandra Jangid and ors (D.B.Civil Revision Petition No.694/92) decided on 7.10.1996, wherein the controversy was whether the suit under Section 22 of the Act of 1959 could have been filed in the court other than District court? This Court held that the words “a Civil Court” used under Section 22 of the

Act did not mean “District Court” alone and mean any “Civil Court” including “the District Court”.

The another judgment relied upon by the learned counsel for the respondents is of the Hon'ble Supreme Court delivered in the case of Seth Chand Ratan v. Pandit Durga Prasad (D) by L.Rs. and ors. (AIR 2003 SC 2736). In this case, the dispute was under the provisions of the M.P. Public Trusts Act, 1951.The Hon'ble Supreme Court in the above matter held that the order passed by the Registrar in the said case by which it was held that the appellant trust is a public trust and disputed temple and some other property including the shops in precincts thereof were shown to be the property of the trust and were being managed by it, became final and conclusive. The only remedy available to the respondent was to institute a suit in civil court under Section 8 of the Act for setting aside the said finding. It will be worthwhile to mention here that in said case, the Registrar himself entertained an application for correction in the recored and recorded the disputed temple as private property of the respondent. The Hon'ble Supreme Court held that the order of the Registrar making correction declaring the temple as private trust, is illegal.

The learned counsel for the respondent relied upon another

judgment of the Hon'ble Supreme Court delivered in the case of Church of North of India v. Lavajibhai Ratanjibhai & ors. (JT 2005 (5) SC 202), wherein the question was whether the Brethren Church was dissolved or continued to exist and whether its properties vested in the CNI, only the authorities under the Trust Act were competent to go into the same and the jurisdiction of the civil court was clearly barred. In this judgment, Hon'ble the Supreme Court held that "jurisdiction of civil court was ousted only in relation to a mater over which the statutory authorities had the jurisdiction. In respect of questions which were outside the purview of the Trust Act or in relation to a matter unconnected with the administration or possession of the trust property, the civil court may have jurisdiction."

The learned counsel for the respondents also relied upon the judgment of the Hon'ble Supreme Court delivered in the case of State of Himachal Pradesh v. Maharani Kam Sundri (AIR 1993 SC 1162) and the judgment of the Hon'ble Supreme Court delivered in the case of Kanbi Manji Abji and ors. v. Kanbi Vaghji Mavji and others (AIR 1993 SC 1163), but they are not relevant in the present matter. There is one more judgment of the Hon'ble Supreme Court delivered in the case of Sahebgouda(dead) by L.Rs. and ors. vs.

Ogeppa and others (Air 2003 SC 2743). In that case, the reliefs claimed were for declaration that the appellants were *wahiwat pujaris* and have *pujariki* rights of performing puja and also for consequential decree for injunction for restraining the respondent, then the Hon'ble Supreme Court held that the question which requires adjudication does not expressly come within purview of the Bombay Public Trust Act 1950 and, therefore, jurisdiction of civil court is not ousted.

I considered the submissions of the learned counsel for both the parties and perused the relevant documents which are submitted before the trial court.

It appears from the impugned order of the trial court dated 10.3.2006 that the trial court was of the view that from the proceedings under the provisions of the Rajasthan Public Trust Act,1959, it cannot be said that the proceedings were illegal and thereafter held that though several objections have been raised by the non-applicants-defendants-appellants against the said entry as well as about maintainability of the suit of the plaintiffs and about the rights of the plaintiffs but in the opinion of the trial court, several disputed questions of facts are involved in the suit which are like, whether defendant no.2 gave the property in dispute to

the public trust, whether defendant no.2 had any legal right to give this property in dispute to trust, whether the plaintiffs had jurisdiction to declare the property as public trust and whether the order of the Assistant Commissioner, Devasthan Department dated 21.1.1985 and the appellate order challenging the order dated 21.1.1985 were illegal and whether if said impugned orders remain as it is then whether the rights of the defendants are affected in any manner. According to the trial court, all these questions can be decided only after evidence in the suit and, therefore, there is prima facie case in favour of the plaintiffs. The trial court observed that in the proceedings under Order 39 Rule 1 and 2, C.P.C., even on the question of law, no detail or final observation can be made by the court. The trial court also held that it is true that the entry made in the Register of the trust maintained by the authority under the Act of1959, can be corrected as per the directions which can be issued by the civil court in the suit filed under Section 22 of the Act of1959 but the present suit is not for cancellation of the entries made in the Register of the trust. The civil court, in Navneet Kumar's case, has decided the issues which are sought to be raised in this suit but since the decision given in Navneet Kumar's case is under challenge and, therefore, principle

of resjudicata cannot be applied and, therefore, the findings given in the case are not binding upon the court below and, therefore, also the trial court was of the view that there is prima facie case in favour of plaintiffs.

The trial court even refused to examine the objection of the defendants-appellants raised on the ground of delay, laches, acquiescence, the right of the plaintiffs in filing the suit on the ground that these questions can also be decided only in the main suit. The trial court held that prima facie in view of the fact that the property in dispute is entered in the Register of properties of the trust , the suit property is public trust property and, therefore, in case injunction will be refused then the entire property will be materially altered and changed, which will cause further complications. The trial court also held that in case the defendants will raise construction in the temple property then it will adversely affect the religious sentiments of the public. The trial court also refused to grant permission to the defendants to raise construction on condition that in case the defendants-purchasers will fail in the suit and the plaintiffs will succeed in the suit then the defendants will remove all the structures.

From the impugned order of the trial court, it is clear that

the trial court has not examined what are rights of the plaintiffs. The trial court did not look into the fact whether the plaintiffs are owner of the property ? If they are not owner of the property in dispute then what are the plaintiffs' rights in the property, whether there is any right of the plaintiff in the suit property? The trial court without holding any prima facie title of the plaintiffs or even right of the plaintiffs, held the prima facie case is in favour of the plaintiffs. The trial court even did not examine the effect of the undisputed documents nor has looked into the right of the plaintiffs even for filing the suit for cancellation of sale-deed nor the trial court recorded any finding on the locus standi of the plaintiffs in claiming the possession of the suit property from the defendants purchasers. There is no mention in the order under which authority the plaintiffs could have sought cancellation of the sale-deed dated 10.7.2000 which was executed not by the plaintiffs but was executed by defendant no.2(deceased now) who did not challenge the sale-deed dated 10.7.2000, rather admitted that he legally sold the property to the defendants-appellants. Assuming for the sake of argument that the vendor and the vendee were in collusion, then the defendant no.1-Trust, in the light of the facts mentioned by the plaintiffs, was/is the owner of the

property, then the defendantno.1-Trust has not challenged sale-deeds dated 2.7.1977, 10.7.1991 and the sale-deed dated 10.7.2000. The trial court further did not, neither look into the rights of the plaintiffs for filing the suit for possession and cancellation of sale-deed nor looked into the fact of actual physical possession over the property for since last at least 30 years since 1977, since when the property in dispute admittedly remained in possession of Chandra Kant and others. In the plaint, it is no where mentioned that despite sale-deed of the year 1977 executed by Krishna Kant in favour of Chandra Kant and others, the property remained in possession of defendant-trust or even defendant no.2-vendor. Not only above that there is no such plea in the suit but if the plaintiffs would have taken such plea then it would have contrary to their foundational fact recorded in the order dated 21.1.1985 wherein itself it is mentioned that the property was in possession of Chandra Kant and his family since year 1977. In the documents on the basis of which the plaintiffs claimed any right in the property in dispute itself, which is the order of the Assistant Commissioner, Devasthan Department dated 21.1.1985 itself, there is clear mention that the property was in possession of said Chandra Kant and his family and they refused to

deliver the possession of the property to Krishna Kumar-defendant no.2. It is nobody's case that the trust, after getting the trust registered and after including the property in dispute in the list of trust property, ever made any effort to take possession of the property from Chandra Kant and others, much less to getting the actual possession of the property. The plaintiffs also has not come with the case that the sale-deed in favour of Chandra Kant and others was fictitious document or by that document, the property was not dealt with. There is no averment that the property in dispute was dedicated to any temple at ;any time otherwise than by order of the Assistant Commissioner, Devasthan Department dated 21.1.1985 or was originally the property was of the temple. This stand was not there of the plaintiffs because of the reason that the plaintiffs' own case is that only by virtue of the memorandum of trust dated 2.6.1982, the property in question became the public trust property. Therefore, the plaintiffs could not have taken a stand that the property which was dealt with by the family of defendant no.2 Krishna Kumar since 1945 and subsequently in the year 1962 and thereafter by executing the memorandum of partition in the year 1967, was the property dedicated for religious or charitable purposes or for the purposes

of trust prior to moving application under the Act of 1959 by defendant no.2 Krishna Kumar as it would have gone against their record.

The trial court also did not consider the facts mentioned in the order dated 21.1.1985 passed by the Assistant Commissioner, Devasthan Department which is the foundation of claim of the plaintiffs. In the order dated 21.1.1985 passed by the Assistant Commissioner, Devasthan Department, it is clearly mentioned that the property in question was sold by Krishna Kumar to Chandra Kant and others by registered sale-deed and copy of which has been placed on record; of the Assistant Commissioner, Devasthan Department itself, which was marked as Ex.6. The trial court, at this juncture, did not consider whether any validly executed sale-deed which has been admitted by the vendor and not challenged , could have been cancelled or could have been declared null and void by the Assistant Commissioner, Devasthan Department under the Act of 1959. In the same order it is clearly mentioned that neither Krishna Kumar, the vendor nor the trust could get back the possession from Chandra Kant and others then in that situation, on the date when order dated 21.1.1985 was passed for registration of trust by including the property in dispute as trust property, the

sale-deed was already executed in favour of Chandra Kant and others about seven years ago and admittedly, on the date of passing of the order dated 21.1.1985, the possession of the property was not with the trust. The trial court avoided to decide the question of title as well as question of possession both, even when the facts are not in dispute.

A number of times, it has been said in various judgments that granting of injunction as well as refusal of injunction both are serious matters and the trial court owes heavy duty to examine the facts of the case in detail as first court and is required to apply its mind to the complete facts of the case as well as should consider all the documents so that the appellate court may not have to look into the facts in detail again and the order of the trial court can be examined by the appellate court within appellate court's jurisdiction. Order passed ignoring all basic and material facts and documents, makes the order absolutely arbitrary, perverse and capricious, if those facts effect the ultimate decision of the trial court in the matter of grant of injunction. There was no reason for the trial court for not accepting the facts which were the facts of the case of the plaintiffs and on the basis of which the defendants submits that the plaintiffs have no case.

The prima facie case cannot be without the case of the plaintiffs and cannot be a case on the basis of any weakness in the case of the defendants. If the plaintiff files a suit and has no case in his favour on the basis of his own case and on the basis of his own document, then even if the defendant has no case to stand then also the court can do only to dismiss the suit of the plaintiff and the court has no jurisdiction in such circumstances, to grant any relief to the plaintiff merely because the defendant has no case. The defendant's weakness of case itself cannot be a case of the plaintiff to succeed in the court of law. An stranger who is having no right, title and interest in the property, cannot say that since he has filed the suit, therefore, he is entitled to relief in the suit or relief of injunction because of the reason that the defendant also has no case or has taken absolutely false and frivolous pleas.

The facts of the present case are very peculiar in nature as the defendants-appellants are relying upon the documents which are not in dispute and also relies upon the facts mentioned in the plaintiffs' foundational documents as well as mentioned in the order on the basis of which plaintiffs are claiming the suit property to be public trust property. The defendants are saying that in view

of the facts mentioned in the order making disputed property as public trust property and entered it in the list of the property of the trust itself as well as from the undisputed documents referred in the order dated 21.1.1985, it is clear that the founder of the trust was not owner of the property on the date when he sought to create the trust by including the property in dispute in the list of trust property and further he admitted that he was not in possession of the property then whether such broad facts could have been ignored by the civil court, by saying that these are disputed facts. The learned counsel for the appellants rightly questioned that, who disputed above facts so as to make these facts disputed facts. The plaintiffs' case has foundation the order dated 21.1.1985 and the defendants are relying upon the facts mentioned in the order itself then if it is case of having no disputed facts so far as title to the property is concerned as well as about the possession of defendants over the property is concerned.

In view of the above facts, it is held that the plaintiffs prima facie failed to prove that the plaintiffs are owner of the property or the plaintiffs have their own any right, title and interest in the property and further the plaintiffs by their documents prima facie proved that the property was never in possession of any public

trust as is clear from the plaintiffs' own order dated 21.1.1985. The plaintiffs failed to prove under which provision of law, the plaintiffs can seek relief of possession of the suit property from the defendants. The plaintiffs failed to prove that how the plaintiffs can get the sale-deed executed by defendant no.2 declared illegal, void, null or ineffective so as to virtually get the declaration that the property belongs to defendant no.1-trust who did not ever challenge the sale-deed dated 10.7.2000 executed in favour of the appellants-defendants nor the he vendor Krishna Kumar has challenged the sale-deed dated 10.7.2000 The plaintiffs further failed to show any legal right under the Act of 1959 by which without initiating proceedings under Section 38 of the Act of 1959, straight way a suit can be filed, that too for cancellation of sale-deed not executed by the public trust or on behalf of the public trust and for getting the possession for plaintiffs themselves. The plaintiffs further failed to plead any fact on the basis of which it can be said that the property in dispute was ever dedicated for public purpose or dedicated to any deity. The plaintiffs failed to show any reason for not challenging the sale-deed dated 2.7.1977 executed by Krishna Kumar in favour of Chandra Kant and his family members if the property was of temple or of public trust

and this fact came in the knowledge of the plaintiffs as back as in the year 1982 when the copy of the sale -deed dated 2.7.1977 was submitted before the Assistant Commissioner, Devasthan Department. The plaintiffs further failed to show any reason if the plaintiffs are entitled to take possession of the suit property then why the plaintiffs did not file such suit for possession against Chandra Kant and his family members who came in possession of the suit property by virtue of sale-deed dated 2.7.1977. And in view of the undisputed fact of property remaining in possession of Chandra Kant and his family members since 2.7.1977 to 10.7.1991 (till it was sold to Krishna Kumar), how it could have been a property of the trust or of any deity. The plaintiffs further failed to show without setting aside sale-deeds dated 2.7.1977 and 10.7.1991 even the trust can get the title and possession of the property in dispute. The plaintiffs' filing of the suit against the present appellants-defendants in the year 2004, that is after four years of the execution of the sale-deed when the appellants purchased the property by paying huge consideration of Rs.35,00,000/- and obtained permission for construction of hotel and started construction, despite their having full knowledge of the sale-deed dated 10.7.2000 then delay is not explained. Above

were the basic facts for proving the prima facie case and from the facts it is proved that the plaintiffs miserably failed to prove their any prima facie case in the light of the undisputed facts and the documents.

Mere making of entering in the register of the property by passing order under Section 21 of the Act of 1959, despite the authority passing the order having knowledge of the facts that the property in question has been dealt with by executing sale-deed by the settler of the trust himself before he intend to give the property to trust and he admitted that he is not in possession of the property and the purchaser is not ready to give back the property to settler or the trust and these facts are mentioned in the order itself then these undisputed facts prima facie makes the entry in the register only a paper entry. Learned counsel for the respondents-plaintiffs also could not seriously dispute that the Assistant Commissioner, Devasthan Department or any authority under the Rajasthan Public Trust Act, 1959 has no jurisdiction to decide the title of any property or validity of sale-deed so as to cancel the sale-deed or declare some one as owner of the immovable property. Then also entry of any property in the register of the properties of the public trust in pursuance of

Section 21 of the Act of 1959 is not a clinching factor for deciding the title of the property. The trial court, therefore, committed error of law by holding prima facie case in favour of plaintiffs merely because of the only fact that the property in question is entered in the register of property as of trust maintained by the plaintiff no.3 by ignoring all other undisputed facts, which prima facie shows the facts otherwise, held the entry more reliable which appears to be illegal being contrary to admitted facts mentioned in the plaintiffs' own relied documents.

It will be beneficial to examine the jurisdiction of the civil court in the matter of challenge to entry made in pursuance of order under Section 18 and 21 of the Act of 1959 in the register maintained under sub-section (2) of Section 16 of the Act of 1959 of public trust. On the basis of entry in the said register, it is said that the property in dispute became trust property. In D.B.Civil Revision Petition No.694/92-Bajrangdas & ors. vs. Vishva Karma Jangir Panchayat through its President Shri Ram Chandra Jangir and others decided by this Court vide judgment dated 7.10.1996 (wherein I was party to judgment), a question arose whether suit for cancellation of entry made in the register under Section 16(2) of the Act of 1959 can be filed only in any District Court or can be

filed in any civil court having pecuniary jurisdiction. The Division Bench of this Court in above case, held that words “Civil Court” used in Section 22 of the Act, do not mean “District Court” alone and means any “Civil Court” including the District Court. If any civil court has jurisdiction to decide about correctness of the entries made in the register maintained under the Act of 1959 of the public trust and its property, then when a suit is filed on the basis of the entry made in the register by the order of the competent authority under the Act of 1959 and the defendants who is having title deed in his favour and is in possession of the property then certainly he having interest adverse to trust can raise objection about the correctness and validity of the entries made in the register maintained under the Act of 1959. This is because that the civil court has jurisdiction to decide the title of the property under civil law. And further because of the plain and simple reason that under the Act of 1959, none of the authority has been given power to decide title of the property and further mere making entry in the register of the trust, of any property, cannot divest a person from title to the property. Even, the matter which can be enquired into under sub-clause (ii) of Section 18 of the Act of 1959 is only whether property is the property of such property.

Then in that situation, the Assistant Commissioner, Devasthan Department, can only from the documents submitted by the parties and after inviting objections under sub-section (2) of Section 18 of the Act of 1959, can decide whether in his opinion, the property is of public trust or not but while doing so, he cannot exercise power of civil court of declaring a deed valid or invalid, legal or illegal and also has no right to declare title of the property in favour of one or other. The procedure for registration of trust as provided under Chapter 5 of the Act of 1959 is substantially of summary nature and as per sub-section (2) of Section 18, the Assistant Commissioner, Devasthan Department is required to give a public notice of enquiry for the purpose of inviting "all the persons having interest in the public trust" to submit their any objections. The person having adverse interest and is not interested in the trust, need not to be invited by the Assistant Commissioner, Devasthan Department, as is clear from sub-section (2) of Section 18 of the Act of1959. At this place, it will be appropriate to quote sub-clause (ii) of Section 18 and sub-section (2) of Section 18 of the Act of 1959:

> "sub-clause (ii) of Section 18:- whether any property is the property of such trust.

> Sub-section (2) of Section 18:- The Assistant Commissioner shall give in the prescribed manner public notice of the inquiry proposed to be made under sub-section (1) and invite all person having interest in the public trust under the enquiry to prefer within sixty days objections, if any, in respect of such trust."

Read with above provisions and the judgment of this Court delivered in the case of Gheesu Dass v. Narsingh Kansara & ors (1999(3) WLC (Raj.) 586), it is clear that the person having interest adverse to trust and claiming such property to be his own, cannot be taken as person having interest in the trust or trust property. In Gheesu Dass's case (supra), this Court held that the suit by such person under Section 22 of the Act of 1959 is not maintainable. The decision of the Hon'ble Supreme Court delivered in the case of Abdul Karim Khan vs. Municipal Committee, Raipur (AIR 1965 SC 1744) was followed by the Single Bench in the case of Geesu Das(supra). The question arises in present case is whether a person who is admittedly in possession of the suit property and has a registered deed of title in his favour and who was never given any opportunity of hearing before making entry in the register of the properties of the trust, despite having knowledge of these facts to the Assistant Commissioner, Devasthan Department and to

the knowledge of the alleged persons who sought the inclusion of the property in the register of the trust and who, neither challenged the title deed nor threatened the said vendor's possession even after making of entry in the register of trust under sub-section (2) of Section 16 of the Act of 1959 then in that situation the person in possession with title deed was required to file a suit for mere cancellation of entry made in the register under sub-section (2) of the Act of 1959.The principle of law is that a cause of action accrues to the party when his any right, title or interest in the movable property is threatened by any other person or body. Mere making entries in the revenue record or even record of rights or entries in any register, without determination of the title of property, the rights in the property, the possession of the property, cannot be a threat to any right, title and interest of the person who is holding a deed of title in his favour and is in possession of the property. The cause of action to that person accrues only when any threat is created by the person holding entry in the record of right or any register and that threat can be created on spot by making efforts to take possession or by adopting lawful means by filing suit for cancellation of deed and for possession of the property and in that situation, in defence, the

defendants can certainly take a plea that the entries in record of right or in the register, (as in present case), are absolutely illegal and void. Since this Court in Gheesu Dass (supra) held that the person who is not interested in the trust or trust property, cannot maintain the suit under Section 22 of the Act of 1959 then, the principle as applicable for civil rights, as mentioned above, fully applies. In these facts and circumstances of the case, the plaintiffs' foundational facts are subjudice in the suit itself and the defendants can certainly show hollowness in the title of not only of the plaintiffs but also of the co-defendants for whose (not said in suit as such) benefit the present suit might have been filed.

The learned counsel for the appellant though relied upon several judgments but most of the judgments are in relation to the Wakf Act and alleged wakf property. Though principle mentioned in those cases can be applied to find out the jurisdiction of the authority under the Act of 1959 and about the maintainability of the suit but in view of the judgment referred above, this Court is of the view that other judgments need not to be referred in detail.

The above prima facie findings have been recorded without considering the finding recorded by the civil court in Navneet

Kumar's case because of the reason that the findings in the above suit have not attained finality and those findings are under challenge in appeal. At this place, it will be appropriate to observe that when there is a finding on some issue after complete trial of the suit, then those findings themselves have their own persuasive value and the court should not ignore those findings without cogent and lawful reasons in subsequent proceedings. The principle of resjudicata bars trial of issue again but propriety demands that a finding recorded after trial has its own value when it is recorded after giving opportunity to both the parties and while considering the prima facie case set up contrary to the finding then heavy burden lies upon the person setting up a case against the finding recorded by the civil court in a suit after trial even when the said judgment is sub-judice and is under challenge in appeal. All that depends upon the facts of each case because of the reason that in subsequent proceedings, the court cannot become appellate court against the judgment in which the finding has been recorded.

The learned counsel for the plaintiffs-respondents took pleas, which was never the case of the even plaintiffs or even any party any time since last more than now 30 years. The learned counsel for the plaintiffs-respondents submitted that in fact sale-

deed dated 10.7.2000 was executed by Krishna Kumar in favour of Chandra Kant and his family members, was a conditional sale or was a mortgage. That is not the case of even plaintiffs any where in the plaint. The learned counsel for the respondents-plaintiffs also took a plea that trust can be created by deed or by implication and, therefore, the suit property can be treated to be trust property as it has been dedicated for trust purpose or to the deity. This is also not the case of the plaintiffs in the plaint. The arguments may have been advanced to see that the defendants should not be allowed to raise construction during pendency of the litigation. The argument has been raised without there being any factual foundation and further is contrary to the stand of the plaintiffs themselves as the plaintiffs themselves are saying that the property became trust property by virtue of the order dated 21.1.1985 because trust was created by defendant no.2 Krishna Kumar. Thereby, the plaintiffs themselves admitted the title of the property vesting in defendant no.2 (which was factually wrong) and this position remained till the year 1985 when the trust was registered. The plaintiffs could not have said that the property was dedicated for public purpose or for charitable trust or deity prior to the year 1982 when application was submitted for registration

of the trust because the settler of the trust himself and his power of attorney clearly stated that Krishna Kumar sold the property and he is trying to take possession back from Chandra Kant and his family members but he could not get the title to the property or the possession of the property from Chandra Kant and his family members. Assuming for the sake of argument that the deed of the year 1977 executed in favour of Chandra Kant and his family members is a mortgaged deed then admittedly, none has redeemed the mortgage nor has filed any suit for redemption of mortgage and, by now, almost 30 years have passed to the deed of 1977. The arguments of the learned counsel for the respondents should have been rejected summarily by saying that those were not grounds taken by the plaintiffs any where and particularly in their suit but even if the arguments are examined then they are again contrary to their own case and documents.

It is further observed that the trial court, while examining the issue of grant of injunction, should look into the facts of the case as well as the legal provisions and thereafter must record prima facie finding on questions of facts which findings, even if it is not mentioned that is only prima facie finding, still will remain prima facie finding on the question of fact or on the question of

law. The court should not casually decide the injunction application and for deciding the injunction application casually, should not avoid the decision on the question of fact when the facts are clear and prima facie finding of fact can be recorded. The court should also see that mere created impression should not prevail over the court when the impression can be washed off if the facts are looked into carefully. At this juncture, it will be appropriate to mention that it is settled law that no one can deal with the property during pendency of the suit and the property is required to be kept as it was on the date of the suit. If this proposition is stressed to mean that in case there is no prima facie case in favour of the plaintiffs, even then merely on the ground the the property during the pendency of the suit cannot be dealt with by any party and is required to be protected in its state as it was in existence on the date of suit then that will be contrary to the settle law that the plaintiffs will have to prove prima facie case, balance of convenience and irreparable injury in their favour and in case any of the ground is not proved by the plaintiffs, then the plaintiffs shall not be entitled to injunction. Some times, granting injunction may cause irreparable injury and the amount of injury cannot be ascertained in terms of money. This is a fit case

where the amount of injury which may be caused to the appellants cannot be ascertained.

In view of the above reasons, the appeal deserves to be allowed and hence allowed. The order of the trial court dated 10.3.2006 is set aside. The injunction application filed by the plaintiffs-respondent is set aside. However, it is made clear that if the appellants-defendants will raise any construction over the property in dispute then they will have no equity in their favour and in case the plaintiffs will succeed in their suit then the appellants-defendants shall not be entitled to any compensation and shall have to abide by the decree which may be passed in the suit.

(PRAKASH TATIA),J.

mlt.